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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 1514



No. 202302105 A2

Royal Courts of Justice

Tuesday, 7 November 2023

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE JEREMY BAKER
HER HONOUR JUDGE DE BERTODANO

REX
V
LAMAR BARLEY

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MR T BASS appeared on behalf of the Appellant.

J U D G M E N T

LORD JUSTICE POPPLEWELL:

- 1 The appellant pleaded guilty at the first opportunity at Luton Magistrates' Court to an offence of possession with intent to supply heroin and an offence of being concerned in the supply of cannabis. He was committed for sentence in the Crown Court at Luton, where on 23 June 2023 Mr Recorder Cohen imposed a total sentence of 2 years' detention in a young offenders institution. The appellant was 20 at the date of sentence and 18 when the offences were committed. The sole ground of appeal is that the sentence should have been suspended.
- 2 The facts are that on 20 July 2021, police officers were in Bedford Park on patrol in an area known to be used for drug dealing. The officers subsequently observed two males, one of whom was the appellant, acting suspiciously and exchanging items freely. When the appellant and the other male noticed the police officers they suddenly turned and left the park. Local police officers were thereafter asked to assist on a search of the area and the appellant and the other male were subsequently sighted and stopped by the police in the street. As the appellant and the other male were being told they would be searched, they made off from the police.
- 3 Police officers eventually detained the appellant and an initial search did not reveal any drugs. However, he was subsequently searched at the police station and there were found concealed within his underwear 30 clingfilm wraps of what was subsequently analysed to be heroin with a street value of about £150. That was offence 1. In interview that day the appellant stated that he had seen the drugs on a bench and had picked them up, believing them to be cannabis, which he intended to keep for his own use. He denied being in possession of heroin with intent to supply.
- 4 The appellant's mobile phone was analysed and the police found messages which indicated that he had been concerned in street dealing cannabis on two separate days in December 2020 and June 2021. That was offence 2. The appellant was released and was not charged until some 21 months later. No explanation has been given for the delay.
- 5 He has no previous convictions or cautions and had not committed any offences in the two years between these offences and the date of sentence.
- 6 The pre-sentence report revealed that the appellant had endured a fractured childhood. His father left home at an early age and his mother, with whom he lived, has a longstanding Class A drugs addiction. This led to his family home being cuckooed and inhabited by other users or dealers, some of whom were very violent towards his mother. The appellant became involved in street supply as a result of drugs debts owed by his mother, and the financial constraints on the family. The author of the pre-sentence report assessed him to be immature for his age and to have become involved through both naivety and pressure. Notwithstanding his troubled childhood and disadvantages in life, the appellant had demonstrated that there were positive attributes to his character. He managed to achieve good qualifications at both GCSE and 'A' Level, he had also shown a good work ethic and was in full-time employment at the time of his sentence. The author of the report assessed his likelihood of re-offending as low.
- 7 In sentencing, the Recorder went through the factors set out in the Imposition of Community and Custodial Sentences Guideline as relevant to whether a sentence should be suspended. The court accepted that the appellant posed no risk or danger to the public, that he had not failed to comply with court orders and that he had strong person mitigation. It also accepted that he presented a realistic prospect of rehabilitation. The Recorder noted that a custodial

sentence would not have a harmful impact on others, but he gave as his principal reason for declining to suspend the sentence that supplying Class A drugs is a very serious offence indeed for which the only appropriate punishment is immediate custody.

- 8 Mr Bass, who has appeared on behalf of the appellant before us, submits that this was an erroneous approach. Not all Class A drug offences must attract an immediate custodial sentence and the Recorder made an error of principle in adopting such an approach. Moreover, he submits properly weighing the seriousness of the offence against all the other factors which pointed towards suspension, the balance came down firmly in favour of suspension. Before the court, he submits, was a young and immature youth who committed a serious offence two years earlier but in a difficult family context; pleaded guilty to it; learned from it; rehabilitated himself; and has led a law-abiding life ever since, gained employment and entered into a positive personal relationship, all against the backdrop of a difficult and troubled upbringing. Incarcerating the appellant, he submits, involved taking away all of the progress which the appellant had made, potentially his relationship, his home and his job and, more than likely, his motivation to better himself. If anything, it increased the likelihood of the offending and was counterproductive to his rehabilitation. Mr Bass also relies on the state of the prison conditions referred to in *R v Ali* [2023] EWCA Crim 232.
- 9 We consider that there is force in these submissions and that the sentence could and should have been suspended. Accordingly, we will quash the sentence of immediate imprisonment and substitute for it a sentence of 2 years' detention in a young offenders institution suspended for a period of 18 months. We attach an unpaid work requirement of 100 hours and a 10-day rehabilitation activity requirement. In imposing those conditions, we have taken into account the fact that the appellant has spent a little over 4 months in prison. However, we also take account that had conditions been attached when he was sentenced it would have been appropriate to include an electronically monitored curfew but for the fact that the author of the pre-sentence report had been unable to verify the address given by the appellant.
- 10 To that extent, the appeal is allowed.

CERTIFICATE

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This transcript has been approved by the Judge.